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## Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Thompson v Lane (Trustee)** (FCA) - discovery - bankruptcy - bankrupt, by interlocutory application, sought order pursuant to r20.31 *Federal Court Rules 2011* (Cth) for 'production for inspection of documents' - interlocutory application dismissed (I B C G)

**Stream v State of Western Australia (Palyku #2)** (FCA) - native title - application for native title's determination - parties agreed concerning determination's terms to be made in relation to 'Determination Area' - application granted (I B C G)

**Dwyer v Volkswagen Group Australia Pty Ltd t/as Volkswagen Australia (No 2)** (NSWSC) - costs - indemnity costs - Calderbank offer - 'common questions' - representative proceedings - plaintiff was unsuccessful in proceedings - determination of costs - 'common questions answered' (I B C G)

**The People of the Small Town of Hawkesdale Incorporated v Minister for Planning** (VSC) - judicial review - planning and environment - plaintiff sought that Extension Decision in respect of planning permit be quashed and declaration that planning permit had expired - proceeding dismissed (I B C G)

**Rai v Beresford** (TASSC) - workers compensation - contract - appellant injured when he fell through roof whilst helping respondent with work on building - Commissioner of Workers Rehabilitation and Compensation Tribunal dismissed appellant's workers compensation claim -

appellant appealed - appeal dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Thompson v Lane (Trustee) [2021] FCA 1078**

Federal Court of Australia

Logan J

Discovery - bankruptcy - bankrupt, pursuant to ss153B(1) &(2) *Bankruptcy Act 1996* (Cth), sought annulment of bankruptcy - bankrupt, by interlocutory application, sought order pursuant to r20.31 *Federal Court Rules 2011* (Cth) for 'production for inspection of documents' in notice to produce - r222 *Uniform Civil Procedure Rules 1999* (Qld) - *GSM (Operations) Pty Ltd v Suwenda* [2010] QSC 33 - *King v GIO Australia Holdings Ltd* [2001] FCA 1487 - "mention" - "reference" - held: interlocutory application dismissed.

[Thompson](#) (I B C G)

### **Stream v State of Western Australia (Palyku #2) [2021] FCA 1068**

Federal Court of Australia

McKerracher J

Native title - application for native title's determination - parties agreed concerning determination's terms to be made in relation to 'Determination Area' - whether appropriate to make determination on agreed terms - determination recognised that Palyku people had held native title in 'subject land' since 'long before' British sovereignty's establishment - s87A *Native Title Act 1993* (Cth) - held: Court satisfied to make determination - application granted.

[Stream](#) (I B C G)

### **Dwyer v Volkswagen Group Australia Pty Ltd t/as Volkswagen Australia (No 2) [2021] NSWSC 1137**

Supreme Court of New South Wales

Stevenson J

Costs - 'common questions' - representative proceedings - plaintiff was unsuccessful in proceedings - whether proceedings' funder 'should be jointly and severally liable with plaintiff for defendant's costs - whether to grant indemnity costs order in defendant's favour - whether unreasonable for plaintiff to reject Calderbank offer - whether to grant indemnity costs order in respect of 'Discrete Choice Experiments' issue and/or 'Structural Break Analysis' issue - answers to common questions - *Yu v Cao* (2016) 91 NSWLR 190 - held: proceedings dismissed - funder to be jointly and severally liable for defendant's costs - indemnity costs order granted in respect of Structural Break Analysis issue - 'common question answered'.

[View Decision](#) (I B C G)

### **The People of the Small Town of Hawkesdale Incorporated v Minister for Planning [2021] VSC 510**

Supreme Court of Victoria

Richards J

Judicial review - planning and environment - plaintiff sought judicial review of 'Extension Decision' in respect of planning permit - plaintiff contended Extension Decision invalid on basis there was no 'valid request to extend' permit for purposes of s69(1) *Planning and Environment Act 1987* (Vic) - plaintiff alternatively argued Extension Decision affected by error on face of the record - plaintiff sought that Extension Decision be quashed and declaration permit had expired - plaintiff also sought extension of time to bring proceeding - r56.02 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - *Planning and Environment Act 1987* (Vic) held: proceeding dismissed.

[The People of the Small Town of Hawkesdale](#) (I B C G)

## **Rai v Beresford [2021] TASSC 38**

Supreme Court of Tasmania

Blow CJ

Workers compensation - contract - appellant injured when he fell through roof whilst helping respondent with work on building - appellant made claim for workers compensation - Commissioner of Workers Rehabilitation and Compensation Tribunal dismissed claim on basis appellant 'was not a "worker" for the purposes of' *Workers Rehabilitation and Compensation Act 1988* (Tas) - Commissioner found there was 'no contractual relationship between' appellant and respondent for appellant 'to be paid from his work' - appellant appealed - 'intention to create legal relations' - conduct - adequacy of reasons - delay - held: appeal dismissed.

[Rai](#) (I B C G)

## Summaries With Link



## **Echo and Silence**

**By:** Sir Samuel Egerton Brydges

IN eddying course when leaves began to fly,  
And Autumn in her lap the store to strew,  
As 'mid wild scenes I chanced the Muse to woo  
Through glens untrod, and woods that frowned on high,  
Two sleeping Nymphs with wonder mute I spy!                   5  
And lo, she 's gone! In robe of dark green hue,  
'T was Echo from her sister Silence flew;  
For quick the hunter's horn resounded to the sky!  
In shade affrighted Silence melts away;  
Not so her sister:—hark! for onward still                   10  
With far heard step she takes her listening way,  
Bounding from rock to rock, and hill to hill!  
Ah, mark the merry maid in mockful play  
With thousand mimic tones the laughing forest fill.

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